

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHNNIE McDOWELL, )  
Petitioner, )  
vs. ) Civil Action No. 07-88 Erie  
EDWARD KLEM et al. )  
Defendants. )

**MEMORANDUM ORDER**

Petitioner Johnnie McDowell's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 was received by the Clerk of Court on April 30, 2007, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on June 10, 2009, recommended that the Petitioner's Petition for Writ of Habeas Corpus be denied and that a certificate of appealability be denied.

The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail. Petitioner asked for an extension of time to file his Objections to the Report and Recommendation [Doc. #28]. His request was granted [Doc. #29] and on July 15, 2009, Petitioner timely filed Objections to the Report and Recommendation [Doc. #31].

After de novo review of the pleadings and documents in the case, together with the Report and Recommendation and the Petitioner's Objections to the Report and

Recommendation, the following order is entered:

AND NOW, this 20th day of July, 2009, it is HEREBY ORDERED, ADJUDGED AND DECREED that the Report and Recommendation of Magistrate Judge Baxter, dated June 10, 2009, is adopted as the Opinion of the Court.

It is further hereby ORDERED, ADJUDGED AND DECREED that Petitioner's Petition for Writ of Habeas Corpus [Doc. #5] is DENIED.

It is further hereby ORDERED, ADJUDGED AND DECREED that a certificate of appealability SHOULD NOT ISSUE with respect to this Court's Order denying Petitioner's § 2254 motion because, for the reasons set forth in the accompanying Report and Recommendation, adopted by this Court as the Opinion of this Court, Petitioner has not "made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). See also Third Circuit Local Rule 22.2 ("[i]f an order denying a petition under § 2254 or § 2255 is accompanied by an opinion or a magistrate judge's report, it is sufficient if the order denying the certificate [of appealability] references the opinion or report."").

The Clerk of Court shall mark this case CLOSED.

  
MAURICE B. COHILL, JR.  
Senior District Court Judge

cc: Susan Paradise Baxter  
U.S. Magistrate Judge

Johnnie McDowell  
FC5686  
SCI Pittsburgh  
P.O. Box 99991  
Pittsburgh, PA 15233